

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 13, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP2009

Cir. Ct. No. 2012CV110

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

SHEBOYGAN FALLS INSURANCE COMPANY,

PLAINTIFF-APPELLANT,

v.

**DANIEL F. ZINDARS, WILLIE L. ROSE, ACUITY, A MUTUAL
INSURANCE COMPANY AND RURAL MUTUAL INSURANCE COMPANY,**

DEFENDANTS-RESPONDENTS,

**HUMANA WISCONSIN HEALTH ORGANIZATION INSURANCE
CORPORATION, BEST OPTION TRUCKING, LLC AND RAYMOND RUMLER,**

DEFENDANTS.

APPEAL from a judgment of the circuit court for Dodge County:
BRIAN A. PFITZINGER, Judge. *Affirmed.*

Before Kloppenburg, P.J., Sherman and Blanchard, JJ.

¶1 PER CURIAM. Sheboygan Falls Insurance Company appeals a judgment and challenges the circuit court order denying its motion for declaratory and summary judgment. For the reasons set forth below, we affirm the judgment of the circuit court.

BACKGROUND

¶2 This is an insurance coverage dispute arising out of an automobile accident in which a vehicle driven by Daniel Zindars crossed over the center line and collided with a dump truck driven by Willie Rose. Zindars' vehicle deflected off the dump truck and collided with a vehicle driven by Raymond Rumler. Zindars, Rose, and Rumler were all injured.

¶3 Sheboygan Falls issued the automobile insurance policy held by Zindars. This action was initiated when Sheboygan Falls filed a complaint in the circuit court, seeking a declaratory judgment stating that it did not have a duty to defend or indemnify Zindars. Sheboygan Falls then filed a motion for declaratory and summary judgment, arguing that Zindars' accident was a suicide attempt and, therefore, was an intentional act excluded from coverage under the insurance policy it issued to Zindars. The circuit court denied the summary judgment motion, reasoning that it could not find, based on the evidence before it, that Zindars intended to cross the center line and hit the dump truck. The court concluded that that issue was a question for the jury. Sheboygan Falls now appeals.

STANDARD OF REVIEW

¶4 This court reviews summary judgment decisions de novo, applying the same methodology and legal standard employed by the circuit court.

Palisades Collection LLC v. Kalal, 2010 WI App 38, ¶9, 324 Wis. 2d 180, 781 N.W.2d 503. The legal standard is whether there are any material facts in dispute that entitle the opposing party to a trial. *Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25, ¶24, 241 Wis. 2d 804, 623 N.W.2d 751. We view the materials in the light most favorable to the party opposing the motion. *Id.*, ¶23.

DISCUSSION

¶5 The insurance policy issued by Sheboygan Falls to Zindars includes an exclusion that states, “We do not provide Liability Coverage for any ‘insured’ ... [w]ho intentionally causes ‘bodily injury’ or ‘property damage.’” Sheboygan Falls contends that the exclusion applies under the undisputed facts of this case, such that the circuit court erred in not granting summary judgment. Sheboygan Falls argues that the court applied the wrong legal standard in determining whether Zindars acted intentionally. Sheboygan Falls further argues that intent can be inferred as a matter of law, citing *B.N. v. Giese*, 2004 WI App 137, ¶11, 275 Wis. 2d 240, 685 N.W.2d 568, and that an intentional, attempted suicide can be inferred from the fact that Zindars’ vehicle crashed into another object and from the facts regarding his mental state leading up to the collision.

¶6 In support of its position, Sheboygan Falls points out that Zindars’ wife passed away less than a month before the collision, and that Zindars was the person who found her dead. Zindars learned after his wife’s death that she had suffered from breast cancer. He also learned that she had run up a significant amount of debt. Zindars stated in a deposition that he did not understand why his wife had not shared with him the fact that she suffered from cancer. He admitted that he felt depressed and, at times, hopeless. Zindars also admitted that he crossed the centerline with his vehicle because he was despondent over his wife

dying. However, as Zindars points out in his brief, he also stated during the same deposition that he had no intention of harming anyone and that he did not believe it was his intention to cross the center line.

¶7 We agree with Sheboygan Falls that a suicide attempt *might* be inferred from these facts. However, Sheboygan Falls' position is just one view of the facts. Under another view of the facts, it might also be inferred that Zindars was distraught at the time he crossed the center line, perhaps even thinking about suicide, such that he was not paying sufficient attention to driving and got into an accident. Such a view of the facts would support a conclusion of negligence, but would not necessarily include an intention to cause injury or damage.

¶8 When intent is at issue, summary judgment is appropriate only if all facts and reasonable inferences from the facts lead to one conclusion. *H&R Block E. Enters., Inc. v. Swenson*, 2008 WI App 3, ¶34, 307 Wis. 2d 390, 745 N.W.2d 421 (WI App 2007). That is not the case here. As discussed above, and as the circuit court pointed out in its oral ruling, there are a number of reasonable inferences that can be drawn from the undisputed facts. Where, as here, competing inferences might be drawn from the facts, summary judgment should not be granted. *Rach v. Kleiber*, 123 Wis. 2d 473, 478, 367 N.W.2d 824 (Ct. App. 1985). Therefore, we are satisfied that the circuit court properly denied Sheboygan Falls' motion for declaratory and summary judgment, leaving the question of intent to be decided by the jury.

By the Court.— Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

